

**CONSERVATION COMMISSION/INLAND WETLANDS
AND WATERCOURSES AGENCY MINUTES
FEBRUARY 2, 2016
REGULAR MEETING**

I. CALL TO ORDER

Margery Winters, Chairperson, opened the Regular Meeting of the Conservation Commission at 7:30 p.m. in the Main Meeting Room at the Town Offices. Other members and alternates in attendance were Charles Haldeman, Jim Morrison, Donna Beinstein, and Donald Rieger. Also present were Michael Glidden, Assistant Town Planner; Janis Prifti, Commission Clerk; and other interested parties.

II. ROLL CALL

1. Appointment of Alternates

Chairperson Winters seated Commissioner Beinstein for the vacancy.

III. APPLICATIONS

1. Administrative Approvals

None.

2. Discussion and Possible Action:

- a. Application #16-01 of R.A.M. Contracting, Applicant; Cathy and Gary LaBrecque, Owners; for drainage repairs and improvements in a wetland adjacent to the existing residence on the property located at 63 Woodchuck Hill Road (Assessor's Map A10, Block 420, Lot 009). Zone R-40. *(received 01/19/2016; decision must be rendered by 03/24/2016)*

Application #16-01 was read into the record.

Robertson Michaud, President of R.A.M. Contracting, the Applicant, reviewed the project focus would be drainage rectification for the new homeowners. The Applicant explained that there is currently driveway and garage heaving and indications are that previous owners' work done revealed crushed pipe and the likelihood of a ruptured footing drain causing free downhill flow and backup in various locations. The Applicant proposed putting in a system to rectify these existing problems, including in the garage, and to redo the driveway. The Applicant noted the hill in back of the house is where the majority of water flows and tracing dye put in above by the well showed up in the driveway and then east to the brook due to the malfunctioning footing

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drain. The Applicant added the major damage is in front of the driveway turnaround and in the garage floor with hydraulic pressure pushing rocks up; in order for repairs to be sustained, the drainage needs to be rectified. The Applicant summarized the system needs to provide containment at the source and then move through a separate pipe utilizing solid pipes and a water tight catch basin, rather than spreading around the house. The Applicant provided a letter that the proposed system would not affect the watercourse and would be minimally invasive; they have been working with the owners for over a year on this project.

The Applicant confirmed they would follow the soil scientist's recommendations, as shown in the drawing provided to the Commissioners. Regarding a potential disturbance of 200 sq. ft. of wetland noted in Town Staff's initial report, the Applicant responded per the soil scientist redesigning and moving the outflow to prevent that; and they will also go above and beyond required erosion control measures to protect the brook. The Applicant believed the work would take about two weeks with good weather, and their goal would be to get contractors in/out as quickly as possible with any pipe laid covered quickly.

The Applicant indicated there is also a recommendation from FVHD to raise the wellhead above grade, which they will move forward on. The Applicant explained the well is currently sitting in an old block basin and the wellhead should be above the ground.

Commissioner Morrison made a motion the Conservation Commission finds that this is a regulated activity because the activities proposed will take place in the Upland Review Area and within the delineated wetlands.

Commissioner Haldeman seconded the motion, and it was passed unanimously.

Commissioner Morrison made a motion that this is not a significant activity because it appears they will be improving the drainage at the parcel and it does not adversely affect the wetlands.

Commissioner Haldeman seconded the motion, and it was passed unanimously.

Commissioner Morrison made a motion to approve Application #16-01 conditioned on the Special Conditions and Standard Conditions in the Staff 01/11/2016 report.

Commissioner Haldeman seconded the motion, and it was passed unanimously.

b. Application #16-02 of Town of Simsbury, Owner, to retain and maintain a culvert constructed along the trail on the property located east of the recreation fields at 28 Iron Horse Boulevard (being shown in the Assessor's records as Hopmeadow Street, Assessor's Map H09, Block 226, Lot 005). Zone R-40. (received 01/19/2016; decision must be rendered by 03/24/2016)

Application #16-02 was read into the record.

Commissioner Rieger made a motion to schedule a Public Hearing on this matter; there have been activities which are violations and the Town should be cited for the violations, that there

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should be a public hearing on those violations, and the Application.

Commissioner Rieger reserved the right to speak further under Robert's Rules.

Commissioner Beinstein seconded the motion.

Commissioner Rieger commented that, "Owing to the statutory anomaly under which this application was deemed received at a meeting which was not held, it having been canceled, the commission did not have its usual opportunity to consider whether the application should be the subject of a hearing. I feel strongly that it should be and that the public interest would thus be served. So I will move that the application be tabled and that it be scheduled for a public hearing at our next session.

It appears to be beyond doubt that the town's recent actions in the eastern part of the wetlands between Iron Horse Boulevard and the Farmington River, however well-intentioned they might have been, violated the Inland Wetland and Watercourses Regulations. The town has filled a watercourse, installing a culvert therein, cleared land down to bare earth with mechanized equipment, causing ruts and erosion, and deposited material, all within a wetland. Any of these regulated activities would require a permit, and each, having been carried out without a permit, is a violation.

It should be noted that the application submitted is obviously incomplete in many ways, in particular in that it appears to deal only with the culvert and leaves the land clearing unaddressed.

It should be noted, as well, that these activities are *significant impact activities*, as that term is used in the regulations, since they may substantially change the natural channel or may inhibit the natural dynamics of a watercourse and are likely to cause or have the potential to cause substantial turbidity, siltation or sedimentation in a wetland. This is another reason for a public hearing.

None of these activities could have been the subject of an administrative approval. The commission may delegate authority to approve certain activities, but only those that are "not located in a wetland or watercourse" (Section 12.1). The regulations do not include provision for the chairman or any commissioner to approve an activity or to waive the commission's jurisdiction. Town officials are responsible for knowing the law.

The environmental sensitivity of the area in question was the subject of an April 2015 letter from the Conservation Commission to the First Selectman. There can be no doubt that the town knew that wetlands protected by the regulations were at issue.

We should note that the regulations provide significant penalties for violations.

The present violations are merely the latest in a series of apparent violations which the town has visited upon the wetlands between Iron Horse Boulevard and the Farmington River, the area that has in recent years come to be called "Simsbury Meadows".

In fairness to Mr. Roy, the prior violations precede his tenure, and he bears no responsibility for them. Nonetheless, the town's long list of apparent violations is indicative of a systemic problem, and, from my point of view, in responding to the present violations, the town should also be coming forward with the beginnings of a plan to address past violations and to assure proper compliance in the future. It should not be sufficient for this commission to merely give an after-the-fact permit forgiving the new violations.

So, to repeat, I move that the application be tabled, that the town be sited for the new violations, and that the town be urged, in responding to the new violations, to also come forward with the beginnings of a plan to address past violations and to assure proper compliance in the future."

Commissioners Rieger indicated this summarizes recent work performed by Town Staff.

The Commissioners requested in the future that they receive complete applications for evaluation. Recently hired Town Staff reviewed that they have been working closely and openly with Land Use Department Staff; the Commissioners did not question Staff's good intentions. Town Staff noted that technically some of the violations occurred in conjunction with other activities in the area, and are not part of this Application with other potential enforcement activities as separate actions unrelated to this parcel. The Commissioners noted the Town manages the area as one property and the Commission could cite the Town parcel-by-parcel for each violation, but would prefer the Town go forward in good faith to address the problems and move toward dealing with these long-neglected problems. Town Staff agreed to set a public hearing but would need to comply with public notice requirements; so if a public hearing cannot be scheduled per State statute for the next meeting, an extension from the Town would be requested and the public hearing scheduled for the following meeting; and Staff will work to assure a complete presentation. The Commissioners requested that the majority of the material to be presented at the public hearing be made available to the Commissioners ahead of time.

The Commissioners discussed the procedure of tabling the application and citing the Town for the violations. Town Staff believed it would be redundant, given the application before the Commission, to cite for violations with the intent of the public hearing to discuss a remediation plan. The Commissioners noted violations have been committed and forgiveness after-the-fact does not eliminate the violation; while the Commission does not have to pursue a remedy, the Town has a history of repeated violations it has not remedied and thus there is a concern the Town will not be forthright in the future. The Commissioners asked why there was only an application for the culvert and not the other matters in questions. Town Staff responded most of this work took place under the previous administration and current Staff is working to only perform work that would come before the Commission for approval. The Commissioners noted numerous activities occurring at Simsbury Meadows and the need to develop a procedure to address these issues. Town Staff suggested that if another application comes in, it would provide further ability to address issues of concern. The Commissioners suggested the Town determine other issues separate from the culvert application which are violations in order to deal with these historic issues.

The Commissioners noted there are new violations which are the subject of Application #16-02, and despite best intentions, there are at least 3 historic regulatory violations that also need to be dealt with. The Commissioners discussed the timing for citing the historic violations, and separately the new violations in Application #16-02. Town Staff planned to discuss with Town administration potential voluntary compliance and the merits of pursuing an enforcement action. Town Staff will work on a remedy and plan for Application #16-02 and try to get that information to the Commissioners prior to the meeting. Town Staff noted that during this current budget process would be good time to address reasonable corrective action for the violations.

The Commissioners noted the need to hold a public hearing for Application #16-02 and a separate public hearing to deal with the historic violations. Town Staff indicated a public hearing is held under State statute for either: 1) an application due to activity deemed significant by the Commission; or 2) if a cease and desist is issued by the Commission or Wetlands Officer to an applicant. Town Staff noted they have correspondence outlining 5 major areas of concern and will have further Staff discussions. The Commissioners believed that only in a Public Hearing would citizens who know a lot about these issues be able to speak and contribute. The Commissioners discussed whether there should be one or two public hearings; however, it was believed combining all the issues could prematurely force a resolution on historic issues with more conversation on those issues needed.

Town Staff confirmed the culvert was installed in October and believed guidelines were met. The Commissioners noted that if the public is required to submit an application to meet State laws, the Town must also meet those regulations, including for culvert repair. The Commissioners noted that placement of fill or woodchips from the site on the trail would require an application. Town Staff confirmed they will assure communication with appropriate Staff in order to be in compliance. Commissioner Rieger revised his motion as follows:

Commissioner Rieger made a motion that: 1) Application #16-02 be tabled to a Public Hearing; 2) that the Town be cited for the new violations, which are the culvert and the filling of the watercourse that is attendant to the culvert and the clearing of land using mechanical equipment down to bare earth with soil disturbance and other deposition of material in the wetlands; and 3) that the Town be urged, in responding to the new violations, to also come forward with the beginnings of a plan to address past violations and to assure proper compliance in the future.

Commissioner Beinstein seconded the motion.

The Commissioners discussed that the historic matters are called “apparent violations”; and citing here would be for the new violations, including: the culvert, the filling of the watercourse attendant to the culvert, the clearing of land using mechanical equipment down to bare earth with soil disturbance, and other deposition of material in a wetland.

The motion was passed unanimously.

- c. Application #16-03 of BMG Management, LLC, Owner, for clearing and regrading the parking lot to install utilities and improve drainage on the property located at 560-566

Hopmeadow Street (Assessor's Map G12, Block 132, Lot 036). Zone B-1. *(received 01/19/2016; decision must be rendered by 3/24/2016)*

Town Staff indicated the Applicant was using GIS topo and following receipt of Staff comments undertook a site survey that found a grade difference of about 8 feet on the plan which plan is now being revised. Town Staff advised the Applicant to grant a 30-day extension in case the revised plan is not ready for the next Commission meeting given the substantial change within 7 feet of mapped wetland soils.

3. Receipt of New Applications

None.

IV. GENERAL COMMISSION BUSINESS

1. Correspondence

- a. Notice of Violation: 6 Apple Lane, dated January 19, 2016

Town Staff indicated this is next door to the former dock; this owner indicated they were mowing invasive species.

- b. Memo from Thomas J. Roy, Director of Public Works, re: Brush Clearing on Iron Horse Boulevard, dated January 20, 2016

Town Staff indicated this memo relates to brush clearing for an FBI investigation with extensive steps documenting conditions in advance, including extensive photos. Now that the area has been freed of invasive species, the FBI's recommendation is that more native species will re-establish themselves in this improved situation. The Commissioners were skeptical that the native species would not require additional help. Town Staff was limited in discussing the nature of the investigation and unable to come before the Commission first; Town Staff contacted All Habitat, who monitored the entire process and determined what should be cut, (bittersweet, Japanese knotweed, multiflora rose, buckthorn) and to preserve ecologically significant shrubs, e.g. dogwood, alder, willow, winterberry. Town Staff provided the Commissioners with photos of the area and equipment used (including a brush hog) with about 30 Staff working for 2 days. Town Staff showed an area near Helens Way where further investment in clearing invasives which are damaging large trees could be beneficial. The Commission representative on the Open Space Committee raised this topic with the Committee and believed manpower and some chemicals may need to be invested in to further assist native plant recovery including further down to Drake Hill Road. Town Staff added that invasive species are prolific, especially near the river, and Staff worked extremely hard clearing this area and it is important to carefully select future areas to work on and this could continue to be such an area.

- c. Memorandum of Decision, Superior Court Judicial District of Hartford: Timothy Martin v. Town of Simsbury, et al., Lark Road

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Town Staff reviewed that this lawsuit involves a case where the homeowner filed a map for property division without the benefit of Zoning approval given that wetland soils are present in the middle of the new lot, according to the State wetlands map. The owner refused acknowledgement and came in for septic approval in 2013/early 2014 when Howard Beach was still on Staff; and it was noticed that 3 test pits had grayish soil 18-22 inches from the surface, which are wetland soils. The owner was told he needed a soil scientist to delineate the area; otherwise, the Town has to go by the State wetlands map. Town Staff indicated while the Town official map does not show wetlands on the property, it appears the lot is a bowl with backyards draining to the area. The owner was denied a building permit to develop the property, given his refusal to demonstrate that wetlands are not present on the property; the Judge's direction to the owner was to come to this Commission for a determination of whether this is a regulated area. Town Staff noted the owner may soon come before the Commission.

The Commissioners discussed:

1) that the Charter Commission voted not to combine the Zoning and Planning Commissions, which was recommended by this Commission;

2) except for the Chairman, the Planning Commission decided to take a \$2500 per lot fee in lieu of for the Holcomb Street property backing up to Great Pond, although the State recently indicated they have fallen behind on their open space acquisitions – the Commissioners noted if they had seen the referral earlier with more time for due diligence, their recommendation for open space may have had more effect;

3) while the First Selectman did not recall receiving the Commission's proposal to amend the Town Code to facilitate the Commission hiring experts, Commissioner Rieger reviewed it with her and she will forward the proposal to the Town Attorney for consideration, although she felt the BOS would require a metric;

4) the Meadowood compliance statement was due in December and Staff will check on its status;

5) the First Selectman plans to speak with health staff regarding the Commission's letter on pesticide spraying concerns and she will advise the Commission;

6) a water shortage ordinance will be drafted to comply with a State-wide recommendation that town's deal formally with water shortages – Greenwich's well-regarded ordinance could be a model. The Commissioners recalled that historically wetlands issued permits to draw water from rivers and streams, e.g. Apple Way residents allowed to draw water from Hopbrook for irrigation. Town Staff confirmed that it depends on the gallons/day whether it falls under a diversion permit, e.g. Hopbrook Country Club's irrigation pond and 8 Apple Lane's past diversion permit; Town Staff will compile a list of such permits to assist the Commission in developing an appropriate ordinance.

7) the Open Space Committee suggested to the BOS an amendment to the Town Code

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responsive to the perceived need from the BOF to sell open space - there is an upcoming public hearing in order to set up a process referring such sales to this Commission, the Planning Commission, the Open Space Committee, etc.; and if this Commission does not respond within 60 days, the proposed sale would be deemed approved. It is anticipated the Open Space Committee will approve their process in about a month and this Commission will also need to have a 60-day approval process.

V. APPROVAL OF MINUTES of the January 5, 2016 regular meeting

Chairperson Winters accepted the January 5, 2016 minutes, as written.

VI. ADJOURNMENT

Commissioner Beinstein made a motion to adjourn the meeting at 8:50 p.m.

Commissioner Morrison seconded the motion, and it was passed unanimously.